

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:
Norwell Television, LLC
For Modification of the Boston,
Massachusetts DMA
CSR-5873-A

MEMORANDUM OPINION AND ORDER

Adopted: August 13, 2002

Released: August 20, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Norwell Television, LLC, licensee of television broadcast station WWDP (Ch. 46), Norwell, Massachusetts ("WWDP"), filed the above-captioned petition for special relief seeking to modify the Boston, Massachusetts designated market area ("DMA") to include the Full Channel TV, Inc. ("Full Channel") cable system communities of Barrington, Bristol Township, Warren and unincorporated areas of Bristol County, Rhode Island. No opposition to this petition has been received. For the reasons discussed below, we grant the petition.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of

1WWDP listed Bristol County as a whole as part of its request, but Commission records indicate that only certain unincorporated areas of Bristol County are served by the cable system. It is those portions, therefore, and not the entire county, which will be considered as included in WWDP's request.

28 FCC Rcd 2965, 2976-1977 (1993).

3Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. See Definition of Markets for Purposes of the Cable Television Broadcast Signal (continued...)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁴

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁵

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁶

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

(...continued from previous page)

Carriage Rules, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

⁴For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁷

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁸

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.

Note to Paragraph (b)(2): Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁹

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁸*Must Carry Order*, 8 FCC Rcd 2965, 2977 n. 139.

⁹The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

(6) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹⁰

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

5. The issue before us is whether to grant WWDP's request to include the communities of Barrington, Bristol Township, Warren, and unincorporated areas of Bristol County, Rhode Island, within its television market. WWDP is considered to be within the Boston, Massachusetts DMA, while Bristol County, Rhode Island, where the communities are located, is within the Providence, Rhode Island-New Bedford, Massachusetts DMA.

6. In support of its request, WWDP argues that the subject communities should be added to its market because it is a "specialty" station which broadcasts Spanish-language programming; it provides predicted Grade B coverage to the communities; it is geographically close, at an average of 24.7 miles from the communities; Full Channel carries other Boston market stations that are located farther away than WWDP; and it provides coverage of issues of concern to Hispanic and other residents in the communities, which is not provided by any other station Full Channel carries.¹¹

7. WWDP states that it is a full power commercial television station which primarily broadcasts Spanish-language programming provided by Telemundo. This programming consists of news, entertainment, local public affairs, children's programming, emergency broadcasts and program-length presentations of local and national businesses and community organizations.¹² WWDP points out that the Commission previously deemed foreign-language stations "specialty stations" and promulgated must carry rules that provided these stations with special protections aimed at encouraging their carriage.¹³

8. The first statutory factor we must consider is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."¹⁴ WWDP notes that there is no record that Full Channel has ever carried its signal on its system nor is it listed in local TV listings. WWDP asserts that its lack of carriage and failure to be listed in local TV guides is not unexpected because WWDP and the subject communities are located in separate

¹⁰47 C.F.R. §76.59(b).

¹¹Petition at 1-2.

¹²*Id.* at 4.

¹³*See Amendment of Part 76, Subparts A and D of the Commission's Rules and Regulations Relative to Adding a New Definition for "Specialty Stations" and Amending the Appropriate Signal Carriage Rules*, First Report and Order, 58 FCC 2d 442 (1976); *recon. denied*, 60 FCC 2d 661 (1976) ("Specialty Station Order").

¹⁴47 U.S.C. §534(h)(1)(C).

DMA and WWDP is a small specialty station with a limited audience.¹⁵ Although WWDP concedes that the Commission is statutorily obligated to weigh historical carriage in analyzing market modification cases, WWDP notes that the Commission has determined that “the historical carriage factor is not controlling in [specialty station] circumstances because the 1992 Cable Act would, in effect, prevent home shopping and other specialty stations which cable systems had previously declined to carry, from ever being carried.”¹⁶ WWDP points out that the Commission has a long record of both adding and refusing to delete communities from a specialty station’s market even in situations where the specialty station could not demonstrate historical carriage.¹⁷ As a result, WWDP argues that its failure to demonstrate historical carriage with regard to Full Channel’s communities herein should not be controlling in this instance.

9. Second, we consider “whether the television station provides coverage or other local service to such community.”¹⁸ WWDP states that, as demonstrated by signal contour coverage maps, it provides predicted Grade B contour coverage to each of the subject communities.¹⁹ Moreover, WWDP states that, as demonstrated by terrain coverage maps, there are no mountains, valleys, or waterways which degrade the reception of WWDP’s signal in the communities.²⁰ WWDP maintains that it is also geographically close to the communities, at an average of 24.7 miles.²¹ WWDP argues that, as a general matter, Grade B coverage demonstrates local service to cable communities.²² WWDP maintains that the economic nexus between Norwell, its community of license, and the subject communities is supported not only by the local service that WWDP provides and the station’s geographic proximity, but also by similar population characteristics, work forces, economies and governments.²³

10. WWDP points out that, according to the 2001 edition of *Television & Cable Factbook*, Full Channel carries six other Boston-market stations on its cable system, all of which are farther away from the subject communities than is WWDP.²⁴ WWDP asserts that the fact that it is geographically closer to the communities at issue than these other Boston-market stations serves to demonstrate that WWDP has a closer nexus to the communities than do these more distant stations.²⁵ In addition, WWDP states that, despite the fact that its Grade B signal is much smaller in relation to these other Boston-market stations, it still must compete with them in an extremely aggressive television market. WWDP states that Full Channel’s carriage of its competitors allows these stations to greatly increase their ability to compete for advertising dollars and audience in the subject communities while, at the same time, leaving WWDP

¹⁵Petition at Exhibits I and II.

¹⁶See *Nationwide Communications, Inc.*, 10 FCC Rcd 13050, 13053 (1995).

¹⁷See e.g., *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997); *Nationwide Communication, Inc.*, 10 FCC Rcd 13050 (1995); *Cablevision of Cleveland*, 12 FCC Rcd 15183 (1997); and *Agape Church, Inc.*, 14 FCC Rcd 2309 (1999).

¹⁸47 U.S.C. §534(h)(1)(C).

¹⁹Petition at Exhibit III.

²⁰*Id.* at Exhibit IV.

²¹*Id.* at Exhibit V. WWDP states that distances range from 23 to 27 miles.

²²*Id.* at 6, citing *Must Carry Order*, 8 FCC Rcd 2965, 2977 (1993).

²³Petition at Exhibit VI.

²⁴*Id.* at 7 and Exhibit VII.

²⁵*Id.* at 8.

at a distinct economic disadvantage in an area in which it provides local service.²⁶ WWDP maintains that the only way correct this is to grant its modification request.

11. The third statutory factor we must consider is “whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”²⁷ In general, we believe that Congress did not intend this third criterion to operate as a bar to a station’s DMA claim whenever other stations could also be shown to serve the communities at issue. Rather, we believe this criterion was intended to enhance a station’s claim where it could be shown that other stations do not serve the communities at issue.²⁸ In this case, because other stations do appear to serve the communities in question, this enhancement factor does not appear applicable.

12. The fourth statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”²⁹ WWDP concedes that it does not command high viewership ratings in the communities.³⁰ It argues, however, that its lack of ratings, just like its lack of historical carriage, is the direct result of its status as a small specialty station. It therefore maintains that its lack of ratings should not be determinative.³¹ In any event, WWDP points out that the Spanish-language programming it provides is not carried by any other station available to the communities.³² WWDP argues that although it currently has a limited audience in the subject communities, that audience will certainly increase once Full Channel commences carriage of its signal because the Hispanic population in that area continues to grow, making WWDP’s programming increasingly more important.³³

13. The Commission has recognized that specialty stations, such as WWDP, often fail to meet the historic carriage factor and often have no appreciable audience shares due the nature of their programming. Therefore, in analyzing specialty stations’ requests to modify television markets, we often look past these criteria to other factors. In this instance, WWDP argues that given its status as a foreign-language specialty station, its lack of historic carriage and viewership should be given little weight. We agree. However, while these factors are not controlling, we cannot totally disregard their presence as urged by WWDP.

14. Despite its lack of historic carriage and appreciable audience share, we find that, in this instance, other factors deserve more relative weight. WWDP’s transmitter is located approximately 24 miles from the system’s headend and its predicted Grade B contour encompasses all of the communities

²⁶ *Id.* at 8-9.

²⁷ 47 U.S.C. §534(h)(1)(C).

²⁸ *See e.g., Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520 (1997).

²⁹ *Id.*

³⁰ *Id.* at Exhibit VIII.

³¹ *Id.* at 9.

³² Petition at Exhibit IX.

³³ *Id.* at 9.

requested.³⁴ We agree with WWDP that these factors suggest that WWDP provides coverage or other local service to the communities.³⁵ In addition, WWDP's petition is unopposed. Finally, all of the communities requested for inclusion are located on the eastern edge of the Providence market closest to the Boston DMA. A previous market modification request filed by WWDP, which sought to add communities located near the core of the Providence DMA was denied because a grant of that request would have upset the balance between the Providence and Boston television markets by granting WWDP widespread carriage throughout the Providence market.³⁶ Our action today, however, does not have a similar result. For all the reasons discussed above, we grant WWDP's request.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended (47 U.S.C. §534) and Section 76.59 of the Commission's rules (47 C.F.R. §76.59), that the captioned petition for special relief (CSR-5873-A), filed by Norwell Television, LLC **IS GRANTED**.

16. These actions are taken pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁷

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

³⁴See *Marks CableVision and TCI CableVision of California*, 12 FCC Rcd 22989 (1997); *recon. denied*, 15 FCC Rcd 814 (2000).

³⁵See *Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12267 (1997) ("the Bureau's reliance on Grade B contour coverage and distance to the community, in terms of both geography and mileage, is fully supported by the [1992 Cable Act], its legislative history, and Commission precedent.").

³⁶See *Norwell Television LLC*, 16 FCC Rcd 21970 (2001); *app. for rev. pending*.

³⁷47 C.F.R. §0.321.